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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/889,203 | 03/13/2002 | Tracey Brown | 650064.406USPC | 8511 |

500 7590 02/19/2009

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
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| EXAMINER | |
|---|---|
| FUBARA, BLESSING M | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1618 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 02/19/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/889,203 | BROWN, TRACEY | |
| | Examiner | Art Unit | |
| | BLESSING M. FUBARA | 1618 | |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *26-56*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

Continuation of 3. NOTE: hyaluronic acid having a molecular weight in the range of 750,000 to 900,000 was not envisioned by the original specification as filed. While claim 31 recites a molecular weight of 750,000 for the hyaluronan, a molecular weight of between 750,000 and 900,000 is not envisioned; contrary to applicants attestation that the specification and original claim 1 supports the amendment, it is noted that the specification does not support the range of 750,000 to 900,000, and original claim 1 does not recite any ranges or any molecular weight for the hyaluronan; thus entering the amendment would raise the issue of new matter and new rejection that has not been made before or in the final rejections; applicant's argument regarding the proposed molecular weight of between 750,000 and 900,000 for the hyaluronan is not persuasive because the amendment is not entered since the entry would require further consideration and it is also noted that the lower limit of 400,000 for the hyaluronan in the finally rejected claim 27 is less than 750,000 such that Falk's hyaluronan having a molecular weight of less than 750,000 meets the lower end of the molecular weight for the hyaluronan in the finally rejected claims; applicant's argument with respect to della Valle also centers around the failure of the della Valle reference to teach 750,000 for the hyaluronan, but that argument is not persuasive as it relates to the finally rejected claims reciting a range of 400,000 to 900,000 noting that molecular weight of 300,000 to 730,000 has points that contain molecular weight of 400,000 to 700,000; furthermore systemic administration is not recited in the finally rejected claims and as such the argument as regards the mode of administration is not part of the claims and della Valle does not have to teach that limitation; Further, applicant's arguments with respect to the rejection under 35 USC 103 has to do with the proposed molecular weight of between 750,000 and 900,000 and the systemic mode of administration, and because the amendment is not entered applicant's arguments are not persuasive in those respects; regarding the declaration of Dr. Tracy Brown, which was addressed in the final office action of 10/30/2008, applicant's closer look of the declaration relating viscosity of hyaluronan to both molecular weight and concentration would also apply to the hyaluronan of della Valle and Falk; the examiner noted in the office action of 10/30/08 that the molecular weight of 250, 400 and 700 kDA are all less that the 750,000 of Falk such that the data would also apply to Falk; it was also noted in the office action 10/30/08 that no concentration of HA was used to generate the data and it is not persuasive that compositions can be prepared without amounts of the components of the composition and such a data may only come from imaginary composition having no amounts; the declaration of Dr. Tracy Brown with respect to della Valle is an opinion declaration because there is no data evidence for della Valle, rather the data refers to Falk, and it is with respect to the della Valle art that the examiner noted the declaration to be an opinion. The rejections are not withdrawn and applicant's arguments directed to the proposed amendment to the claims have not been found persuasive as the arguments are not directed to the finally rejected claims. /BF/ .